

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

JOHNNIE RAY HAWTHONE

PETITIONER

VS.

CASE NO. 4:07-CV-4074

LARRY NORRIS, Director,
Arkansas Department of Corrections

RESPONDENT

ORDER

On April 18, 2007, the Court in Case No. 4:06-CV-4098 adopted the Report and Recommendation of the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas and dismissed Petitioner Johnnie Ray Hawthone's Petition for Writ of Habeas Corpus. In adopting Judge Bryant's Report and Recommendation, the Court found Hawthone's habeas petition, filed without permission from the Eighth Circuit Court of Appeals, to be a successive petition, and thus barred by 28 U.S.C. § 2244(b)(3)(A). Hawthone sought leave to appeal the denial of his habeas petition through a Motion for Certificate of Appealability, which the Court denied on May 9, 2007, having found the motion fatally deficient for its failure to make a substantial showing of the denial of a constitutional right. Hawthone then petitioned the Eighth Circuit Court of Appeals for a certificate of appealability, which the Eighth Circuit denied on June 13, 2007. The Eighth Circuit denied Hawthone's petition for rehearing of that decision on July 26, 2007.

Hawthone previously brought habeas corpus petitions in 2001 and 2003. In 2002, this Court found Hawthone's first habeas petition for relief under § 2254 barred by the statute of limitations. *See Hawthone v. Norris*, No. 4:01-CV-4074 (W.D. Ark. 2002), *cert. denied*, 540 U.S. 897, 124 S.Ct. 259, 157 L.Ed.2d 176 (2003). Hawthone's second habeas petition was filed in the United States District Court for the Eastern District of Arkansas on December 8, 2003, and dismissed without

prejudice on January 26, 2004, to allow Hawthone to obtain authorization from the Eighth Circuit Court of Appeals to file a successive habeas petition.

The instant habeas corpus petition, Hawthone's fourth successive habeas petition, is now before the Court is Judge Bryant's Report and Recommendation, filed October 31, 2007. (Doc. 15). Judge Bryant recommends that the instant habeas petition be denied and dismissed on the grounds that it is a successive petition filed without prior Eighth Circuit approval. Hawthone filed timely objections to the Report and Recommendation. (Doc. 17). Having reviewed the record of this matter *de novo*, the Court adopts the Report and Recommendation as its own.

Respondent seeks dismissal of the instant fourth successive petition as unauthorized under 28 U.S.C. § 2244(b)(3)(A). Section 2244(b)(3)(A) provides: "*Before* a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A)(emphasis added). Upon review, the Court agrees with Judge Bryant that the instant habeas petition is clearly a "successive petition" such that permission from the Eighth Circuit Court of Appeals is necessary to avoid dismissal. *See* 28 U.S.C. § 2244(b)(3)(A). Nothing in the record indicates that Hawthone has obtained such permission from the Eighth Circuit, and Hawthone does not contend to the contrary in his objections.

CONCLUSION

In accordance with Judge Bryant's Report and Recommendation, Defendant's Motion to Dismiss Petition for Writ of Habeas Corpus should be and hereby is **GRANTED**. Petitioner Johnnie Ray Hawthone's petition for writ of habeas corpus is hereby **DENIED** and this matter is **DISMISSED**. Further, Petitioner Johnnie Ray Hawthone is hereby **WARNED** that future violations

of the pre-authorization requirement of 28 U.S.C. § 2244(b)(3)(A) may result in the imposition of **sanctions** against him. An appeal from this decision may not be taken in good faith.

IT IS SO ORDERED, this 28th day of May, 2008.

/s/Harry F. Barnes
Hon. Harry F. Barnes
United States District Judge